

MARRIAGE

Girls witness serious love-making and courtship earlier than boys. At dances small girls follow their more experienced sisters and cousins, imitating their movements during the dancing and afterwards sitting with them while the young men pay them compliments and try to persuade them to retire with them into the long grass. When a girl is about twelve or thirteen initiated boys begin to court her, and when she is about fifteen or sixteen she has at least one lover and probably one in each of the villages neighbouring her own. She passes through a succession of love affairs, besides more casual affairs. I doubt whether any girl in Nuerland goes to her husband a virgin.

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As a rule boys are initiated from about fourteen to sixteen. Unlike the girls, whose social life develops slowly from childhood to marriage without any sudden change of status, the boys jump at initiation from the grade of boyhood to the grade of manhood, and the character of their social life is correspondingly transformed; though even before initiation boys make some adjustments in their way of life in anticipation of the status they will acquire when they have passed through the rites. In particular, they abstain from eating in the presence of unrelated girls. A small boy eats with his mother and sisters, but when he is about six he eats with the other boys of the household when the women-folk have guests, lest they might feel embarrassed at the presence of a lad, though only a small one, and, bit by bit, he gets into the habit of eating with them regularly.

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After initiation a lad takes on the full privileges and obligations of manhood in work, play, and war. Above all, he gives himself whole-heartedly to winning the favours of the maidens of his neighbourhood. Courtship now rivals devotion to cattle as his major interest. In speaking of a recently initiated lad Nuer often say: 'And now he has become a man and will court the girls.' He takes every opportunity for flirtation which offers itself. His chances are chiefly at dances, and Nuer youths, for this reason, attend as many wedding dances and other drum-dances as they can in their district during the rains and the harp-dances at neighbouring camps in the dry season. In speaking of these dances young men speak always of the girls they will meet at them, of how the girls will admire their finery and their excellent dancing and display of spearmanship and duelling with the club, and they add: 'And then of course we will spend the night in courting.'

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distinction does not apply to animals killed by the bride's family and kin or which have been disposed of by them and have died outside their kraals, for these count as bridewealth before, as well as after, the consummation. On the other hand, any calves the cattle may bear before this ceremony count as original bridewealth and not as increment. Likewise, if the incomplete union is broken before the *aw*, all the cattle and their increase, including those which have died, must be returned, whereas in the event of divorce after the *aw* the bride's people do not have to return animals which have died a natural death in their own kraals, and they have a right to retain two cows, the *yag jui* and the *yag seieme*, the cow of the skirt, the mark of married status, and the cow of the hair, which is shaved off the bride's head at the consummation.

It is the *aw* therefore which makes the union a contract. Consequently, it occasionally happens, when people are anxious to expedite the marriage, that the consummation takes place before the wedding. I heard it suggested that this should be done in the case of a youth who had been speared and could not take the bridegroom's usual part in weddings, and although it was decided to hold the wedding first, with the bridegroom as a spectator, no one suggested that in the circumstances a reversal of the ceremonies would have been improper. Mrs. Smith, of the American Mission, told me of a case of an elderly man who, desiring to marry a girl with the approval of her family but against her own wishes, prevailed on her relatives to rush her through the *aw*, leaving the wedding to be held later.

The day of the consummation has to be fixed in advance because beer has to be brewed for the visitors. In the early morning the bridegroom goes with a company of the youths of his village to fetch the bride, his womenfolk remaining behind to prepare for their visitors. They chant on the way, for this is a happy occasion for the village. Sometimes they find on arrival that the bride's mother has prepared beer for them. They have to ask her permission to take her daughter away and she asks them for presents before she gives it, such things as a spear, armlets, a pipe, and tobacco. The young men promise to give her what she asks for and depart, escorting the bride and her girl companions, who have oiled and decked themselves with ornaments for the ceremony. They go chanting to the bridegroom's village, one of the poems often being a composition of the bride in honour of her future husband, and there is much horseplay between the sexes. When they near the village the young men go ahead and the girls are met by the youths of the village who bring them into the kraal where they serenade the bridegroom's mother with poems outside her hut. The ceremony is mostly a female affair, the men looking on.

After a while a kinsman of the bridegroom places a withering-coal across the inner threshold of one of the huts and the bridegroom crawls over it, followed by the bride, the best man, and a special girl friend of the bride. This action is said to make the marriage fruitful. Then, towards evening, takes place the rite of consummation, though it must be said again that there is no invariable order of events in these ceremonies and no fixed time-table. The bride retires to a hut wearing a special goatskin cap and here the bridegroom joins her. His age-mates seek him out and say to him: 'Come now, let the people go to bed, come and loosen the bride's girdle.' He is bashful and gets the business over as quickly and inconspicuously as he can. He enters the hut and gives his bride a cut with a switch and seizes her thigh, she

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533 refusing his advances and crouching by the wall of the hut. He strikes her with a
565 withering-cord, snatches the cap off her head, breaks her girdle, and consummates
the marriage. Reluctance is imposed on her by custom and she pretends to resist
even when she has known her husband often before in the gardens. In Nuerland
it is most unlikely that a bride will be a virgin. That is not expected. Wedding and
consummation ceremonies are held even for a girl who is pregnant or one who has
been divorced and is being married a second time if she has not borne children.
They say that 'She has returned to maidenhood.' It is only divorced women who
have led profligate lives who are not remarried with these ceremonies. Maidenhood
is a social, not a physical, state.

585 His duty done, the bridegroom leaves the hut, sometimes the bride's girl friends
rushing at him and beating him with their fists as he emerges. The rest of the evening
is given to the favourite pastimes of Nuer youth, *maag* and *law*, flirting with the
girls and making love to them. There will be many youths present: the people of
the bridegroom's homestead, his mother's kin, if they live near, the local *ay*, the
youths of the village, and bands of youths from villages for miles round, for the
maag is a popular ceremony and it is known that many girls will attend it. Then all
retire for the night, the bride's companions sleeping in a hut reserved for them.

On the following morning take place three rites which may on no account be
omitted, the sacrifice (which may take place the evening before), the lustration, and
the shaving of the bride's head. The sacrificial beast should be an ox, but if the
bridegroom's father is poor, and at this stage of the marriage he is likely to be hard
up, the *jang maag*, the 'cow' of the consummation, may be a goat, or even just beer.
The bridegroom's *gum buthi* rubs ashes on its back, calls out the spear-name of his
lineage and speaks of the beast and the bride, telling the spirits and ghosts of his
lineage to witness the union and to bless it with sons so that the lineage may con-
tinue. He says to them, 'Now you see your ox; you see this maid; let her be a good
wife; let her bear many children, many sons; let her work well in her husband's home,
milk the cows, dry the cattle dung; let her be a faithful wife and not a profligate';
and so forth, asking them to make the union a lasting and happy one. He then
spears the ox and it is cut up by the wife's people, the visitors, and divided among
them in the customary portions, only the head, neck, and a few other pieces of meat
going to the people of the bridegroom. The visiting maidens at once cook and eat
the *tips*, kidneys, and stomach, besides filling themselves with porridge and beer,
the bride alone abstaining because she may not eat in the home of her mother-in-law.
They take the rest of the carcass back to their homes for their elders. As generally
happens when there is a feast, outsiders, persons not of the bridegroom's closest kin,
hang about the carcass like kites when it is being cut up, hoping to obtain a piece of
meat by begging, snatching, or persistently getting in the way. There is much shout-
ing, argument, and general confusion. The *gum buthi* may perform another duty
associated with his office in anointing the bride with butter. Her father will already
have blessed her in this manner before she set out to go to her husband's home.

Now takes place the rite of lustration, the *lak testni ka ciik*, the washing of the hands
with bracelets. The visiting maidens, the young wife's companions, sit in a hut and
a pot of warm water is passed to them. One of them washes her hands in the water
and then takes a bracelet off her arm, drops it into the pot, and passes the pot to one

CHAPTER IV

THE VIOLATION OF RIGHTS IN WOMEN

1. ADULTERY

NUER courts come into operation only when a recognized wrong is committed, when the validity of some claim is in dispute, or when a man is unable to obtain his rights in cattle from a kinsman, relative-in-law, or debtor. The courts do not operate unless one of the parties resorts to them for one of these reasons, except in cases which are now in the nature of criminal offences: homicide, affray, assault, for example. The law is only clear when the law is broken, and it is in the analysis of disputes brought before the courts that the principles of Nuer law most clearly emerge. Disputes over marriage, that is, over the transfer and distribution of bridewealth or more probably over the return of bridewealth cattle in the event of divorce, do not usually appear before the courts unless a combination of circumstances makes a friendly settlement impossible; and it is symptomatic of the process of social disintegration now taking place in Nuerland that obligations in this connexion are increasingly ignored. In the past a man could only obtain redress if the sanctions for recognized rules of conduct operated with sufficient effect on the wrongdoer or if he had the physical strength, with the support of public opinion, to obtain his rights by force. Adultery, which is in no sense a criminal offence according to Nuer concepts, is now a common cause of legal dispute. There is reason to believe that adultery was less frequent in the past simply because the fear of physical retaliation was greater, and in a sense because acts which are now called adultery were not then treated as adultery at all.

We have seen that the Nuer do not attach great importance to physical paternity. It is legal paternity which is the primary object of marriage, but this does not mean that the relations of the sexes are indiscriminate and uncontrolled, or that a man will not resent encroachment on his exclusive rights to his wife's body. Every Nuer aims at attaching as many children to his name, and through himself to his paternal lineage, as possible. An old man will sometimes allow or even invite a stranger to have intercourse with his wife so that he may have children to further his name and interests in posterity. Whoever may be the physiological father of the children, his legal paternity is in no way impaired. As will be seen later, a man who is impotent may do likewise, though he is not likely to advertise the fact, for impotence is the object of scorn and ridicule among the Nuer.

COMPENSATION TO HUSBAND

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and its consequences which he runs in resuming sexual relations with his wife. *Yang hule* is both indemnification and spiritual expiation. 684

(ii) If a child is born of the act of adultery, the five head of cattle must be returned to the adulterer to avoid any possibility of confusion over the legal paternity of that child, but *yang hule* must always remain with the husband. 848

Application of these Principles depends on Circumstances

Adultery is therefore an offence because it amounts to an infringement of the legal husband's physical rights in his wife, and also a wrong against the ritual status of the husband which may be impaired by his wife's impurity. This is the law, although its application will depend on a variety of circumstances: the physical condition of the husband and of the wife; the morals of the wife and the age of the wife; the position in the social structure of the parties concerned.

Impotence of the Husband

The physical potency of the husband is sometimes questioned by the defendant, and if the point is proved, the court will rarely enforce the payment of compensation or even of *yang hule*. A man's physical rights in his wife will not be guarded or upheld by the law if he cannot take advantage of them, nor is he likely to suffer any ritual impurity if he is unable to have sexual relations with his wife.¹ On the other hand, it may be argued that the legal husband has acquired rights in his wife by the transfer of cattle to her kin, and if he is unable to enjoy those rights personally, at least he is entitled to dispose of them as he pleases. This at any rate would carry the theory of rights acquired by the transfer of cattle to its logical conclusion, but the Nuer do not look at it in quite this way. We have seen that impotence is recognized as a ground for divorce on the part of the woman, and a man who is impotent has failed in his duties as a husband. In these circumstances he should be pleased that his wife has borne him a child, whoever the father may be. To the Nuer, if he is not pleased, he ought to be. 684 833 837

In cases of this sort a court will sometimes enforce the payment of *yang hule*, though by no means always, but will certainly never allow a claim for the rest of the accepted number of cattle. The concept reflects not so much a definite law as a circumstance which any court

¹ That this rule has been altered by recent legislation will be clear later.

² There is, I think, a conscious distinction here. If the husband is impotent and unable to have intercourse with his wife, then there is no risk of the impurity which the *yang hule* is intended to neutralize. If he is able to enjoy sexual intercourse with her, but is sterile and unable to beget children, then the adulterer will still be protected against liability for full compensation (*ruok cik*), but is liable to pay *yang hule*. The husband, though sterile, still runs the risk of contamination.

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will consider in assessing the wrong and the amount of compensation to be paid. It is a plea which is frequently raised by defendants to a charge of adultery and is, of course, not easy to prove. Evidence is based not so much on the statement of the wife as on general reputation (and it must be remembered that in the intimate life the Nuer lead there is not much which can be concealed), and also on the existence or otherwise of other children and the evidence of co-wives if there are any.

Barrenness of the Wife and Age of the Wife

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It is sometimes held that adultery with a woman who is known to be barren is not an offence, though this view is certainly not universally held. Adultery with a woman who has borne several children and is elderly is also considered a minor offence and rarely requires compensation, especially if she has adult children. At most *yang hule* will be demanded in these circumstances.¹

Morals of the Wife

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The temperament and morals of the wife are also factors which a Nuer court will consider. If the husband, usually a man who has been absent from home for a long time, brings charges of adultery against two or more men and the charge is proven, the court will order that each shall pay part of the compensation.² There is a limit to this. Nuer consider that a woman who has had sexual relations with more than three men is a *ciok se jok*, a 'loose woman', and that the men concerned cannot be held responsible. For this reason the defendant or defendants in a case of adultery will often attempt to prove that the woman has committed adultery with a fourth man. In this case a court will not enforce the payment of compensation, or of *yang hule*, though, if a child is born of one of them, it may compel him to pay *yang hule*. In such circumstances, the husband will often institute a divorce against his wife, and if there is any dispute between himself and his wife's relatives, a court will usually take his side.

Jal Bath v. Gai Nyal (Thiang: Central Nuer Appeal)

Jal Bath claimed compensation (*ruok ciok*) from Gai Nyal on grounds of adultery with his legal wife Nyandeng. A child had been born in consequence of the act of adultery, or so Jal alleged. This was admitted by Gai. (It was in his interests to do so.) Jal claimed *yang hule* only, but Gai refused to pay. The matter was taken to court and Gai ordered to pay. Some months later,

¹ This was recorded at the Nuer Chiefs' Council Meeting of 1945: 'When a man commits adultery with a woman who has adult sons or daughters, he is only liable to pay *yang hule* and not full compensation.'

² E.g. if two men, each will pay three head of cattle, if three men, each will pay two head of cattle.

24 SOME ASPECTS OF MARRIAGE AND FAMILY AMONG THE NUER

684 have been paid in compensation for adultery with the wife of Yang". The same verb is used for paying compensation for intercourse with an unmarried girl e.g. one says *Si yang rak*, "You will pay a cow" for this action. *Rak* also means to legitimatise a child born of an unmarried concubine. The genitor says *Ca gude rak*, "I have legitimatized my child by payment of a fee".

833 To describe sexual relations outside the union of marriage Nuer use the
834 verb *lam*. The use of this word is a polite way of referring to sexual intercourse and could also be used to describe marital relations if one were to refer to intercourse between husband and wife. But it would be very unusual to refer to it. The word *lam* is used to describe the social relationship of a man to an unmarried concubine or widow-concubine, though it is a slightly coarse expression when used in this connection, and in the presence of related persons one would preferably say of a man and a widow *Mothke pi hel*, "They drink water together". *La-ɿ* is also used to describe the courtship of a girl by a youth and refers to mere flirting or sexual intercourse alike. In fact it covers all relations between the sexes from casual intercourse to permanent cohabitation, though it has generally the sense of extramarital relations.

835 The rules of exogamy which obtain for simple legal marriage apply also
582 to all the different unions described in this paper. A man may not cohabit with a woman whom he may not marry.

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585 The test of the nature of a procreative union is in the division of the
431 bride-cattle of daughters born of it. When the pater is alive he receives
428 the "cattle of the father" and "the cattle of the mother". If he is dead
586 they belong to his sons (the bride's half and full brothers). The genitor
587 in ghost-marriage and levirite marriage has no legal claim to the "cattle of the father" or the "cattle of the mother". They belong, at any rate in theory, to the bride's brothers. The genitor in ghost-marriage stands in the place of the pater with regard to the bride's brothers as well as to the bride herself so that there is no need to define ownership of the bride cattle very clearly, for in any case they join his herd. When the genitor has begotten the bride in levirite concubinage, division of the cattle may be more complicated because the bride may have full or half brothers begotten by her dead pater, or by other men after his death. I discuss these matters in a preliminary manner here because they will be elaborated later.

The genitor in ghost-marriage and in levirite marriage may always demand a cow for his services for having begotten the bride. Similarly a man who lives with a widow-concubine may demand a cow on the marriage of her daughter on the grounds that he has begotten her and, if he acted as her foster-father, he may claim another two or three head of cattle for having acted as bread-winner to the family during her infancy and adolescence. He says "I cut meat for them" in reference to the fact the children have been nurtured by his labour as herdsman, gardener, and hunter.